MCFM

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The Massachusetts Council On Family Mediation is a nonprofit corporation established in 1982 by family mediators interested in sharing knowledge and setting guidelines for mediation. MCFM is the oldest professional organization in Massachusetts devoted exclusively to family mediation.

PRESIDENT'S PAGE

Dear Mediators/Members:

Spring has finally come to our town—the season of new beginnings. The tulips planted last fall are bursting out of the ground, having survived the cold and the dark of this past winter. There are, of course, some plants that didn't make it—but others, well-fed and pruned, well rooted, seem to grow faster than ever.

It's not much of a stretch to think of our divorce mediation clients in the same way—the negotiating of the terms and the year or two after the final hearing representing a long, cold winter—with some miserable storms thrown in. Spring does come for most of our clients, but some don't recover from the battering to their self-esteem, don't bounce back from this life blow.

In her book For Better or Worse; Divorce Reconsidered (2002), E. Mavis Hetherington describes the results of the Virginia Longitudinal Study (VLS), the most comprehensive examination of divorce conducted to date. The folks who do poorly after divorce, the "Defeated" (about 10%), are more prone to have pre-existing personality challenges, lack of adequate social supports, chronic anger at or lingering attachment to an ex-spouse, impulsivity, being mired in the past. The opposites of these folks are what Hetherington calls the "Enhancers". Those 20% who, post-divorce, grow more competent, well-adjusted, and self-fulfilled. They tend to be adaptable, resilient, and persistent in the face of difficulty. Then there is the largest group; the "Good Enoughs." They recovered but did not grow past their previous level of functioning.

I like to think that as mediators, we can play some (even small) part in helping our clients move up in this hierarchy of coping—helping them avoid some of the pitfalls of the newly divorced (for example, dwelling on the past rather than focusing on the future). In the VLS, developing meaningful work was especially helpful for women in creating a positive post-divorce adjustment. The support and love of a new partner turned out to be an important contributor to post-divorce happiness, especially for men.

We know from other sources, that a significant contributor to the failure of second marriages is the challenge of parenting children from a prior marriage. When helping divorcing couples with their parenting plan, can we educate them to beware of potential pitfalls in future parenting as part of a stepfamily?

Normalizing some of the challenges ahead and supporting tolerance of struggle and failure, along with persistence in the face of difficulty, can perhaps be the equivalent of giving extra nourishment to a plant before winter hits, hoping that when spring comes, the new growth will turn out to be stronger and more beautiful than ever.

Happy Spring to you all,

lynn@lynnkcooper.com

CONTENTS

WHAT PARENTS NEED TO KNOW, WHAT LEGAL PROFESSIONALS NEED TO TELL & WHAT JUDGES SHOULD CONSIDER: A Synopsis of Current Research on Risk and Resiliency in Children of Divorce

By Allison J. Bell

Divorce happens, and everyone seems to know that divorce increases certain risks for children. Years of research, including the longitudinal studies by Kelly & Wallerstein, as well as work by Kelly& Emery 2003, Hetherington & Kelly 2002, and Amato 2000 point to the differences in outcomes for children who come from divorced families. The risk of problems developing is twice as great for children of divorce, as compared to children of married families.

The kinds of problems that are most commonly seen in children of divorce include twice as many teenage births, academic and achievement difficulties, acting-out behaviors, and internalizing symptoms such as increased anxiety and depression.

However, it is important to note that there is more overlap than divergence between these comparison groups in the research, and while the group differences are significant, they are small in magnitude. The majority of children from divorced families score within the Average range on standardized tests, and function well on measures of psychological, social and behavioral adjustment. It is approximately 25% of the children who fall below this, and it is this 25% group that demands the attention of divorce professionals. We must examine why these children continue to struggle, to fall through the cracks, and determine what we, as professionals assisting families going through the transition of divorce, can do to improve the outcomes for these children.

Divorce as a 'traumatic' event that occurs in the lives of children has pre-disposing risk factors. Depression in mothers raises the level of risk for their children. In fact, any psychiatric illness or personality disorder in either parent increases risk. Poverty always increases risk. Adolescence increases risk in children regardless of family separation, and thus is an additional predisposing risk factor.

The stress of separation shifts many features of a family. Parents often do not adequately inform their children about the impending separation and how their lives will

be affected by it. They don't talk about the "D" word. This is partly because parents are often afraid of their own emotions about the subject, as well as fearing how their children will react to the news. They fear rejection and blame, while also fearing that their decision to separate will hurt or damage their children. Parents and legal professionals have long been under the impression that it is in children's best interests to keep them 'shielded' from the news. In actuality, the research strongly suggests that by not talking with children about the separation, children feel that they have little to no opportunity to ask questions, that their voices don't matter, that parents impose ideas of how life should look post-divorce on them without regard for their input. Forty-five percent of children questioned by researchers state that they were only told one or two statements about the impending separation, and another 23% were told nothing at all. This lack of communication increases the level of stress for the children.

Other risk factors for children of divorce include the loss of important relationships (most often the relationship with the father and the father's extended family), relocations, unstable economic resources, and diminished or inadequate parenting due to parents' becoming overly involved in their own emotional reactions to separation.

Children need to know what's happening. Their lives are being overturned, irrevocable decisions are being made. Children have feelings about these life-altering changes. As we no longer believe that children are to be seen and not heard, how is it that we are still not listening to them? Appropriate information about what is happening to the family and how children's lives will be affected will alleviate their anxiety and help them to cope with the many changes that are occurring. It also establishes a pattern of communication between parents and children that will serve both well moving into post-divorce life.

Parents often do not adequately inform their children about the impending separation and how their lives will be affected by it. They don't talk about the "D" word.

Research has shown that the child who lives with a depressed parent has a 2-3 times greater risk of developing depression. A study conducted by Meadows et al. 2007 of 2,120 three year-olds in four

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different family types shows that maternal anxiety and depression is associated with increased chances of anxiety, depression, attention deficit and oppositional-defiant behavior in three year-olds in ALL family types. Paternal anxiety and depression alone has NO significant association with such problem behaviors in any family type.

Diminished or inadequate parenting has been shown to be a risk factor for children of divorce. There is often deterioration in the quality of parenting, especially for the parent who didn't want the divorce in the first place and who is therefore more likely to suffer from depression. Parents can be angry, depressed, preoccupied, stressed, and more emotionally unpredictable. Such emotional upheaval leaves them less available to be affectionate and positively involved with their children, particularly for boys.

Research shows that the more conflict there is between the parents, the less time/access the father will have.

There is a great deal written about the loss of fathers in the lives of children of divorce. It used to be that nearly 50% of children of divorce suffered from reduced contact with their fathers. This number has decreased to around 25%, which means that one-quarter of children of divorce still lose contact with their fathers by three years post-divorce. Research shows that the more conflict there is between the parents, the less time/access the father will have. Conversely, the more the mother trusts and has a positive view of the father's involvement pre- and post-divorce, the greater the likelihood that the children will stay in close contact with their father. Unmarried mothers tend to be very unforgiving and angry, while unmarried fathers tend to be young, poor and less educated, thus substantially increasing the risk of loss of contact with the father.

Pre-divorce conflict levels between the parents have been demonstrated to be a poor predictor of post-divorce conflict. However, up to 15% of parents remain in high conflict three years post-divorce, and it is their children that we must worry most about. Often, it is one parent who is actually propelling the need to fight. These are parents who require Parenting Coordination in order to try to stay out of recurrent litigation.

High conflict has traditionally been considered to be the most damaging fallout of divorce in terms of children's adjustment. While there is no doubt that conflict can be damaging, this view tends to be

oversimplified. We need to be able to ask, "Who drives the conflict?", "What type of conflict is going on, for how long, and how is it being expressed?", and most importantly, "What can we, as mediators and Collaborative Divorce professionals, offer to parents to help them reduce/manage conflict?"

The INTENSITY of conflict is a risk factor; the FREQUENCY of conflict is not. Parents may have different sources of conflict, inter-parental and legal. The crucial element is whether the conflict is being expressed through the child. Inter-parental conflict is what affects the children directly.

Using children to express parental hostilities and disputes is most strongly associated with poor/negative outcomes for children and adolescents of divorce (Buchanan et al. 1991). However, children and adolescents of high-conflict parents who DO NOT put their children in the middle have outcomes as good as those with low-conflict parents.

The parenting behaviors that create risk for children are:

- contempt for the other parent
- asking intrusive questions about the other parent
- creating a need for the child to hide information
- creating a need for the child to conceal feelings for the other parent.

Remarriage and cohabitation do not reduce the risk for children. In fact, cohabitation actually increases the risk for sexual abuse of children. Furthermore, only 10% of cohabiting relationships last more than five years, thus exposing the children to repeated risk of further relationship loss.

Relocation after divorce is a risk factor for children of divorce. Relocation is all about the adults, not about the children. Moves of more than 75-100 miles create barriers to closeness and continuity of relationship.

Children are more likely to view themselves as "I am a child of divorce" when one parent has sole physical custody, as opposed to shared physical custody.

What are the buffers that act as protective factors for children of divorce? What reduces risk and promotes resiliency? The current research shows that good adjustment of the residential parent, competent parenting by both parents, greater involvement on the part of fathers, and the kinds of activities children

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participate in with fathers all reduce risk (Hetherington & Kelly 2002, Kelly &Emery 2003, Kelly 2007). Parental warmth, particularly on the part of the mother, has been found to be as meaningful a buffer for children as the reduction of parental conflict. Parents' ability to encapsulate their conflicts by keeping them away from children's ears and eyes serves to protect children. If there are siblings, children are also buffered by strong sibling relationships. Limiting the number of family transitions (moves, new relationships/cohabitations) protects children. Finally, the degree to which parents can adopt either a parallel or cooperative parenting style post-divorce will be another factor in determining positive outcome for their children.

As divorce professionals, we have a responsibility to help our clients understanding the most recent findings on how children are affected by divorce.

In developing appropriate parenting plans, it would be beneficial for divorce professionals to bear in mind that children of divorce have a lot to say based on their experiences. Children want MORE contact with their fathers. Children are more likely to view themselves as "I am a child of divorce" when one parent has sole physical custody, as opposed to shared physical custody. Children who experience shared physical custody feel nurtured, have a sense of sufficiency, and do not feel a sense of longing for a parent. Their self images are not shaped and viewed through the lens of divorce. They tell us that the movement between two households is not a problem for them, and that, even if it's inconvenient, it is worth it to them in order to maintain balanced relationships with both parents. A meta-analysis of 33 studies by Bausermann 2002 on measures of general, behavioral, emotional and academic adjustment shows that children's adjustment is 35-50% better in joint physical custody. Furthermore, joint legal custody was linked to higher rates of father-child contact and fewer adjustment difficulties. The research tells us that overnights with the noncustodial parent are NOT detrimental for young children, and that attachment processes and the impact of divorce/parenting plans on disrupted attachment must be thoughtfully considered as we make recommendations for parent-child access.

The message is clear. As divorce professionals, we have a responsibility to help our clients understanding the most recent findings on how children are affected by divorce. We need to help clients grapple with the "D" word, with developing thoughtful, meaningful

narratives that can be shared with their children in order to help everyone in the family absorb and digest the process of change. It is up to us to educate parents about what they can do and how they can behave so that their children can be inoculated against the ill effects of divorce. With our help, families can make positive changes, children's needs and input can be considered, and their long-term outcomes vastly improved. We can help divorcing parents create resilient children.

Allison J. Bell, Psy.D. is a clinical psychologist who also holds a Master's degree in dance/movement therapy. Dr. Bell is certified to practice EMDR, a specific technique for use with victims of trauma, and she performed critical incident stress debriefings for victims of 9/11 in and around New York City. She has been in private practice in Westchester County, N.Y. since 1987, and is specialty-trained in child psychology, neuropsychological evaluation of children and marital therapy. Allison can be contacted at 413-207-4087, or at allisonbell@msn.com

"Teaching is the downstairs maid of professions."

Frank McCourt

LEGISLATION TO AUTHORIZE MEDIATION OF CASES INVOLVING CHILDREN

Editor's Note: *Below is a copy of a mediation bill sponsored by Representative Alice Peisch of Wellesley in January 2011, and now pending in the Massachusetts Legislature. If passed it would authorize the Probate and Family Court to order the mediation of disputes concerning parental rights and responsibilities for minor children.* ***If you support this bill please contact your representative, or email your endorsement to Ms. Peisch at Alice.Peisch@mahouse.gov or call her office at 617-722-2070.***

SECTION 1. Chapter 208 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after section 28A the following new section:-

SECTION 28B. Mediation of cases involving children

The general purpose of this section is to:

(a) Manage conflict and decrease acrimony between parties in a dispute concerning parental rights and responsibilities for minor children;

(b) Promote the best interest of children;

(c) Improve the parties' satisfaction with the outcome of disputes concerning parental rights and responsibilities;

(d) Increase the parties' participation in making decisions for themselves and their children.

(e) Increase compliance with court orders;

(f) Reduce the number and frequency of cases returning to court; and

(g) Improve court efficiency.

In all cases involving disputed parental rights and responsibilities or grandparents' visitation rights, including requests for modification of prior orders, the court may order the parties to participate in mediation. If the parties are ordered to participate in mediation under this section, all issues relevant to their case, including but not limited to child support and issues relative to property settlement and alimony, shall also be mediated unless the court orders otherwise.

The mediator has no authority to make a decision or impose a settlement upon the parties. The mediator shall attempt to focus the attention of the parties upon their needs and interests rather than upon their positions. Any settlement is entirely voluntary. In the absence of settlement, the parties lose none of their rights to a resolution of their dispute through litigation.

Reasons that the court may choose not to order mediation include, but are not limited to, the following:

(a) A showing of undue hardship to a party;

(b) An agreement between the parties for alternate dispute resolution procedures;

(c) An allegation of abuse or neglect of the minor child;

(d) A finding of alcoholism or drug abuse, unless all parties agree to mediation;

(e) An allegation of serious psychological or emotional abuse; and

(f) Lack of an available, suitable mediator within a reasonable time period.

The court shall not order mediation if there is a finding of domestic violence, unless all parties agree to mediation.

Either party may move to have the mediator replaced for good cause. Mediation proceedings shall be held in private, and all communications, oral or written, made during the proceedings, which relate to the issues being mediated, whether made by the mediator or a party, or any other person present, shall be privileged and confidential and shall not be disclosed and shall not be admissible in court.

Any mediated agreement reached by the parties on any or all of the disputed issues shall be reduced to writing, signed by each party, and filed with the court as soon as is practicable.

The parties shall participate at mediation in good faith. If the mediator determines that mediation is not helpful in resolving the dispute, the mediator shall report that fact to the court and return the matter to the court for adjudication of the underlying issues.

In the event both parties are indigent, the mediator shall be paid a set fee for his or her services. The amount of the fee shall be set annually by the Probate Court. The court may order each party to pay a proportional amount of said fee.

The Probate Court shall establish rules and take such action as necessary to effectuate the purpose of this section.

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FIRST MEETING OF THE MERRIMACK VALLEY MEDIATORS GROUP

Editor's Note: Thanks to Roland Turmaine, the historic note reproduced below escaped the dustbin of history. It was FAXED on February 12, 1999 by Karen J. Levitt to the founding members of The Merrimack Valley Mediators Group: June Johnson, Lynda Robbins, Toni-Lynne Rafanelli, Ronald Zagaja, Posie Cowan, Roland Turmaine, Maxa Beird and Gary Horwitz.

MERRIMACK VALLEY MEDIATORS GROUP

Summary of January 28, 1999 Organizational Meeting

The first meeting of the Merrimack Valley Mediators Group was held on January 28, 1999 at the office of Lynda Robbins. Present were Karen J. Levitt, Lynda Robbins, June Johnson, Posie Cowan, and Ron Zagaja.

The consensus of those present was that the Merrimack Valley Mediators Group was a good idea, and that we should have monthly meetings. The group is to remain informal, and will act as a forum for the exchange of ideas and information, for discussion regarding strategy and tactics, for practical advice regarding mediation practice, and for general support and assistance regarding mediation. We agreed to meet the last Thursday of each month from 8:15 a.m.-9:30 a.m. at Lynda Robbins' office, with the time to be extended on occasion depending on the focus of the meeting.

We also discussed having guest speakers (including members of the group!), talk at some of our meetings on a variety of topics, and maybe even research a topic on occasion with a report to be made at the next meeting. Topics suggested included running a mediation practice, New Hampshire law and mediation, the ins and outs of co-mediation, mediation and the Courts, memorandum of understanding vs. agreement, and the meaning of "equitable" distribution.

Attached to this summary are the names, addresses and telephone/fax numbers of the current group members, as well as a list of the actual meeting dates for the coming months. We hope to see everyone at the next meeting, when we will try to set the agenda for the coming year. Bring your ideas and suggestions to the meeting.

Thank you everyone for your interest and energy-see you at the next meeting!

"Love is no assignment for cowards."

Ovid

CAN COUPLES POST-DIVORCE VOLUNTARILY MODIFY THEIR SEPARATION AGREEMENTS? An Email Exchange of Ideas

From: Les Wallerstein <wallerstein@socialaw.com>
Date: March 15, 2011
Subject: RE: query

Dear all:

I recently sent a pro se couple to court with a mediated agreement that contained the following text:

"If the parties decide to modify this Agreement after it is executed they will do so only by a signed, notarized, written instrument. The parties expressly agree that such jointly signed, notarized, written instruments shall be enforceable to the same extent as if now incorporated into this Agreement."

The judge declined to accept their surviving alimony waiver, and insisted it be converted to a merged alimony waiver.

This morning the ex-wife asked if they could use the paragraph above to re-generate their jointly requested surviving alimony waiver.

All thoughts will be appreciated.

From: "Fern Frolin" <ffrolin@grindlerobinson.com>
I think the answer to your question is "no." But your client's idea is a "better than nothing" alternative.

They can certainly do a modification agreement, but the party who wants to enforce runs the risk of the later unhappy party attacking the modification because there is no finding of "fair and reasonable." Indeed, the record judicial finding just the opposite. That said, the parties could improve the enforcement chances by adding additional consideration for the survival…or at least additional language explaining the change.

From: "Oran Kaufman" <oran@orankaufman.com>
Not sure I understand- wife wants to put same language in and try again? Won't judge just kick it out again? Sorry- maybe I'm being dense - flesh out the question for me a bit more- I'm intrigued?

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From: Les Wallerstein <wallerstein@socialaw.com>
So the quoted paragraph is intended to allow divorcing couples to enter into voluntary, post-divorce modifications... without returning to court. So, for example, if there were court ordered alimony of $100 per week and husband agreed to increase it to $150, the parties "should" be able to make a binding, voluntary agreement to that effect... and likewise, they "should" be able to make a binding, voluntary agreement to lower the alimony to $50 per week.

The ultimate question is how much authority do divorcing couples really have to voluntarily modify their agreement post-divorce... and how enforceable would those voluntary, post-divorce modifications be if one of the ex-spouses subsequently attacked it.

While the Quinn case expressly precludes voluntary, post-divorce reductions of child support, it is utterly silent on the issue of voluntary, post-divorce increases of child support.

From: john fiske <jadamsfiske@yahoo.com>
I have wondered about that question since the beginning of time. If the parties obtain court approval of an agreement in the morning and then modify it in writing before a notary that afternoon, is their new agreement enforceable in court even though they have not filed a modification and obtained court approval of the modified agreement?

My conclusion is no, for at least two reasons. First, their new agreement may contain terms the court would not have approved in the beginning, such as cohabitation language or surviving alimony waivers. Second, the unique process under section 1 of chapter 208 in which a Separation Agreement becomes a court order only applies to the Agreement submitted to the court. It took me a few years for it really to sink in that a contract is enforceable in the superior court in equity (maybe a two or three year process if you're lucky) and a court order is enforceable in the probate court by the contempt power (maybe a week on a short order of notice, etc). Divorcing couples who want to enforce their agreements do not know how fortunate they are that they are actually enforcing a court order (the plaintiff thinks it's fortunate and the knowing defendant curses his fate).

Now, after talking to you (Les) on the phone, you make the fine point that the judge approved language allowing the couple to change the agreement by themselves "enforceable to the same extent..." So you say maybe no one knows the answer, and I think I will stand by mine. I can't imagine

some of the assistant judicial case managers in Middlesex even letting the plaintiff file such a contempt, but what do I know?

From: "Eileen Shaevel" <resolutions@shaeveladr.com>
I agree with John...their new Agreement is not enforceable, irrespective of the language. First, they cannot confer on the court the power or obligation to enforce, through contempt, an Agreement they make after the court has approved their prior Agreement. There must be an underlying action for every new Agreement so that it can be incorporated into that action, which is what makes it enforceable (as well as modifiable), whether it is the original divorce action, a modification, or even a contempt.

The language in their Agreement only serves to specify how they can modify the original terms, meaning in writing and notarized, in order for the new terms to be recognized by the Court (as opposed to a verbal agreement or a written agreement that is not notarized). But it still must be incorporated into an existing action. How many times have you seen parties verbally, or even in writing, agree to new terms, such as lowering child support, and if the recipient brings a contempt action seeking arrears based on the original amount, the Court will enforce the original Agreement, not any subsequent Agreement that was not filed and incorporated into a court order.

The parties cannot do what appears to be an end run around the judge because they did not like what he did to their original Agreement. Hopefully, if they are sincere that neither should have the right to seek alimony in the future, they will stick with the spirit of that agreement. But I realize there are no guarantees since if one of them needs the support because of a material change in circumstances, that person can bring the matter to Court. Whether the alimony is awarded is another matter.

From: Edward Ginsburg <seniorlawyers@aol.com>
Eileen's analysis and John's comments are right on point. They say it all

From: "Oran Kaufman" <oran@orankaufman.com>
I agree with what appears to be consensus on this issue.

From: "Levine, William" <wmlevine@leeandlevine.com>
I am the latecomer, here. There is no question in my mind that John and Eileen are correct.

From: Edward Ginsburg <seniorlawyers@aol.com>
If the Yankee fan agrees, who can ask questions

TORN BETWEEN GLADIATOR & RUBBER STAMP

By John A. Fiske

The lawyer whose client is in mediation is an advisor, not a zealous advocate. To quote the rule: "As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications." — Preamble, A Lawyer's Responsibilities, SJC Rule 3:07 Professional Conduct

This article arises from several recent encounters with experienced family law attorneys who are understandably confused and upset by trying to advocate zealously for their clients in mediation.

The lawyer has difficulty allowing the client to do what the clients thinks is best under the circumstances. The lawyer may even tell the client to stop talking to the other party or to the mediator for fear that the client may agree to something the lawyer does not think is appropriate. Some of these attorneys tell me they fear accusations of malpractice if they are not zealous advocates. I tell them, **"Read the rule."**

The rule is even more helpful in addressing the circumstance when the client, having been fully informed of his legal rights and obligations, and understanding the practical implications, tells his lawyer to accept a settlement offer that the attorney believes is woefully inadequate and certainly less than what a court would approve under established applications of existing law, and well short of what the lawyer has been consistently demanding on behalf of his client.

Guess what: It's not the lawyer's decision. Again, read the rule: "A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter." Rule 1.2, Scope of Representation, Rule 3:07

It's hard to be clearer than that. Webster's New International Dictionary Second Edition defines "abide" as, among other things, "to acquiesce in, to conform to, to accept as valid and take the consequences of; as, to abide by a decision."

The attorney for a client in mediation is in the most difficult position of anyone in the case, torn between gladiator and rubber stamp. For example, lawyers who have carefully analyzed the

unanimous opinion and remarkable footnotes of the Supreme Judicial Court's decision last July in Ansin v. Craven-Ansin see many complex criteria for defining what sort of marital agreement between spouses may or may not be enforceable later on.

The lawyer needs to make sure the client is informed of the practical implications of signing a proposed marital agreement and may disagree with what the client insists on or accepts. Thus, many experienced family lawyers make sure they write a letter to the client explaining his choices and the recommendation of the lawyer; some attorneys keep a copy of that letter signed by the client to acknowledge receipt and understanding of the advice. Hopefully, lawyers representing clients in mediation can find guidance and comfort by going back to what they do best: **When in doubt, read the rule.**

John A. Fiske is a partner at Healy, Fiske, Richmond & Matthew, a Cambridge law firm concentrating in family law and mediation. MLW: Published: November 22, 2010

"A journey is like marriage. The certain way to be wrong is to think you control it."

John Steinbeck

AN ACT TO REFORM AND IMPROVE ALIMONY

Editor's Note: *As this edition of the FMQ goes to press, the proposed act below is pending in the Massachusetts Legislature. It has been endorsed by both the Massachusetts and Boston Bar Associations... and if enacted, would dramatically change the commonwealth's alimony laws. Public comment will be sought in May. Emphasis has been added for clarity. Caveat mediator est!*

Be it enacted by the Senate and the House of Representatives in the General Court assembled, And by the authority of the same as follows:

SECTION 1. That this Act shall be known as the Alimony Reform Act of 2011.

SECTION 2. Section 34 of chapter 208 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting, in line 5, after the word "other" the following words: in accordance with Section 48.

SECTION 3. Said section 34 of said chapter 208, as so appearing, is hereby further amended by striking out the third sentence and inserting in the place thereof the following sentence:

In fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each of the parties, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties, the opportunity of each for future acquisition of capital assets and income, and the amount and duration of alimony, if any, awarded under Section 48.

SECTION 4. Said chapter 208 is hereby further amended by inserting after section 47 the following section:

Section 48. 1. Definitions:

(a) **"Alimony"** is the payment of support from one spouse to another for a reasonable length of time, pursuant to a court order and for the purpose of providing a spouse in need of support periodic payments from a spouse who has the ability to pay it.

(b) **"General Term Alimony"** is the periodic payment of support to a recipient spouse who is economically dependent.

(c) **"Rehabilitative Alimony"** is the periodic payment of support to a recipient spouse who is expected to become economically self-sufficient by a predicted time, such as, without limitation, reemployment; completion of job training; or receipt of a sum due from the payor spouse pursuant to a judgment.

(d) **"Reimbursement Alimony"** is the periodic or one-time payment of support to a recipient spouse after a marriage of not more than five years and for the purpose of compensating the recipient for economic or noneconomic contribution to the financial resources of the payor spouse, such as enabling the payor spouse to complete an education or job training.

(e) **"Transitional Alimony"** is the periodic or one-time payment of support to a recipient spouse after a marriage of not more than five years and for the purpose of transitioning the recipient to an adjusted lifestyle or location as a result of the divorce.

(f) **"Duration of Marriage"** is the number of months from the date of legal marriage to the date of service of a complaint or petition for divorce or separate support duly filed in a court of the Commonwealth of Massachusetts or another court with jurisdiction to terminate the marriage. The court shall have discretion to increase the duration of marriage where there is evidence that the parties' economic marital partnership began during their cohabitation period prior to the marriage.

(g) **"Full retirement age"** shall mean the payor's usual or ordinary retirement age for United States old-age social security benefits. It shall not mean "early retirement age" if early retirement is available to the payor or "maximum benefit retirement age" if additional benefits are available as a result of delayed retirement.

2. General Term Alimony

(a) General Term Alimony shall terminate upon the remarriage of the recipient or the death of either spouse, provided that the court may require the payor spouse to provide life insurance or another form of reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) Except upon a court finding that deviation beyond the time limits of this section are required in the interests of justice, where the Duration of Marriage is twenty years or less, General Term Alimony shall terminate no later than a date certain in accordance with durational limits set forth below:

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(1) If the Duration of Marriage is five years, or less, General Term Alimony shall be no greater than one-half the number of months of the marriage.

(2) If the Duration of Marriage is ten years or less, but more than five years, General Term Alimony shall be no greater than to sixty percent of the number of months of the marriage.

(3) If the Duration of Marriage is fifteen years or less, but more than ten years, General Term Alimony shall be no greater than seventy percent of the number of months of the marriage.

(4) If the Duration of Marriage is twenty years or less, but more than fifteen years, General Term Alimony shall be no greater than eighty percent of the number of months of the marriage.

(c) The court shall have discretion to order alimony for an indefinite length of time for marriages longer than twenty years.

(d) General Term Alimony shall be suspended, reduced or terminated upon the cohabitation of the recipient spouse when the payor shows that the recipient has maintained a common household, as defined below, with another person for a continuous period of at least three months.

(1) Persons are deemed to maintain a common household when they share a primary residence together with or without others. In determining whether the recipient is maintaining a common household, the court may consider any of the following factors:

(i) Oral or written statements or representations made to third parties regarding the relationship of the cohabitants;

(ii) The economic interdependence of the couple or economic dependence of one party on the other;

(iii) The common household couple engaging in conduct and collaborative roles in furtherance of their life together;

(iv) The benefit in the life of either or both of the common household parties from their relationship;

(v) The community reputation of the parties as a couple;

(vi) Other relevant and material factors.

(2) An alimony obligation suspended reduced or terminated under this provision may be reinstated upon termination of the recipients common household relationship; but, if reinstated it shall not extend beyond the termination date of the original order.

(e) Unless the payor and recipient agree otherwise, General Term Alimony may be modified in duration or amount upon a material change of circumstances warranting modification. Modification may be permanent, indefinite, or for a finite duration, as may be appropriate under the circumstances before the court. Nothing in this provision shall be construed to permit alimony reinstatement after the recipient's remarriage, except by the parties' express written agreement.

(f) Once issued, General Term Alimony orders shall terminate upon the payor attaining the full retirement age when he or she is eligible for the old-age retirement benefit under the United States Old-Age, Disability, and Survivors Insurance Act, 42 U.S.C. 416, as amended and as may be amended in the future. The payor's ability to work beyond said age shall not be a reason to extend alimony, provided that:

(1) When the court enters an initial alimony judgment, the court may set a different alimony termination date for good cause shown. In granting deviation, the court must enter written findings of the reasons for deviation.

(2) The court may grant a recipient an extension of an existing alimony order for good cause shown. In granting extension, the court must enter written findings of:

(i) A material change of circumstance that occurred after entry of the alimony judgment; and

(ii) Reasons for the extension that are supported by clear and convincing evidence.

(3) The provisions of this section shall be prospective, such that alimony judgments entered before the effective date of this act shall terminate only as set forth in section 7(b) of this chapter.

Continued on next page

3. Rehabilitative Alimony
(a) Rehabilitative Alimony shall terminate upon the remarriage of the recipient, or the occurrence of a specific event in the future, or the death of either spouse, provided that the court may require the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) The alimony term for rehabilitative alimony shall be no more than five years. Unless the recipient has remarried, the Rehabilitative Alimony term may be extended on a complaint for modification upon a showing of compelling circumstances in the event that:

(1) Unforeseen events prevent the recipient spouse from being self-supporting at the end of the term with due consideration to the length of the marriage; and

(2) The court finds that the recipient endeavored to become self-supporting; and

(3) The payor has continuing ability to pay and no undue burden.

(c) The court shall have discretion to modify the amount of periodic Rehabilitative Alimony based upon material change of circumstance within the rehabilitative period.

4. Reimbursement Alimony
(a) Reimbursement Alimony shall terminate upon the death of the recipient or a date certain.

(b) Reimbursement alimony may not be modified by either party.

(c) Income guidelines set forth in section 6 (b), below, shall not apply to Reimbursement Alimony.

5. Transitional Alimony
(a) Transitional Alimony shall terminate upon the death of the recipient or a date certain that is not longer than three years from the date of the parties' divorce, provided that the court may require the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term

(b) Transitional alimony may not be modified, extended or replaced by another form of alimony.

6. Considerations for Setting Form, Amount and Duration of Alimony
(a) In determining the appropriate form of alimony and in setting the amount and duration of support, a court shall consider: the length of the marriage; age of the parties; health of the parties; both parties' income, employment and employability, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution to the marriage; marital lifestyle; ability of each party to maintain the marital lifestyle; lost economic opportunity as a result of the marriage; and such other factors as the court may deem relevant and material.

(b) Except for Reimbursement Alimony or circumstances warranting deviation for other forms of alimony, the amount of alimony should generally not exceed the recipient's need or 30 percent to 35 percent of the difference between the parties gross incomes established at the time of the order being issued. Subject to section (c) below, income shall be defined as set forth in the Massachusetts Child Support Guidelines, as they may be amended from time-to-time.

(c) For purposes of setting an alimony order, the court shall exclude from its income calculation:

> (1) Capital gain income and dividend and interest income which derives from assets equitably divided between the parties under Section 34; and
>
> (2) Gross income which the court has already considered for setting a child support order whether pursuant to the Massachusetts Child Support Guidelines or otherwise; provided that nothing in this section shall limit the court's discretion to cast a presumptive child support order under the Child Support Guidelines in terms of unallocated or undifferentiated alimony and child support.

(d) In setting an initial alimony order, or in modifying an existing order, the court may deviate from duration and amount limits for General Term Alimony and Rehabilitative Alimony upon written findings that deviation is necessary. Grounds for deviation may include:

> (1) Advanced age; chronic illness; or unusual health circumstances of either party;

Continued on next page

(2) Tax considerations applicable to the parties;

(3) Whether the payor spouse is providing health insurance and the cost of heath insurance for the recipient spouse;

(4) Whether the payor spouse has been ordered to secure life insurance for the benefit of the recipient spouse and the cost of such insurance;

(5) Sources and amounts of unearned income, including capital gains, interest and dividends, annuity and investment income from assets that were not allocated in the parties divorce;

(6) Significant premarital cohabitation that included economic partnership and/or marital separation of significant duration, each of which the court may consider in determining the length of the marriage;

(7) A party's inability to provide for his or her own support by reason of physical or mental abuse by the payor;

(8) A party's inability to provide for his or her own support by reason of a party's deficiency's of property, maintenance or employment opportunity; and

(9) Upon written findings, any other factor that the court deems relevant and material.

(e) In determining the incomes of parties with respect to the issue of alimony, the Court may attribute income to a party who is unemployed or underemployed.

(f) Where the Court orders alimony concurrent with or subsequent to a child support order, the combined duration of alimony and child support shall not exceed the longer of: (i) the alimony duration available at the time of divorce; or (ii) rehabilitative alimony commencing upon the termination of child support.

7. Modifications

(a) Enactment of this chapter shall not be deemed a material change of circumstance that warrants modification of the amount of existing alimony judgments.

(b) Enactment of this chapter shall be deemed a material change of circumstance that warrants modification of existing alimony judgments that exceed the durational limits set forth in section 2, above. Existing alimony awards shall be deemed General Term Alimony, and shall be modified upon a complaint for modification without additional material change of circumstance, unless the court finds that deviation from the durational limits is warranted.

(c) Any complaint for modification filed by a payor pursuant to this section solely because the existing alimony judgment exceeds the durational limits set forth in section 2, above, may only be filed pursuant to the following time line:

(1) Payors who were married to the alimony recipient five (5) years or less, may file a modification action one (1) year after the effective date of the remaining provisions of this law.

(2) Payors who were married to the alimony recipient ten (10) years or less but more than five (5) years may file a modification action two (2) years after the effective date of the remaining provisions of this law.

(3) Payors who were married to the alimony recipient fifteen (15) years or less but more than ten (10) years may file a modification action three (3) years after the effective date of the remaining provisions of this law.

(4) Payors who were married to the alimony recipient twenty (20) years or less but more than fifteen (15) years may file a modification action three and one-half (3) years after the effective date of the remaining provisions of this law.

(5) Notwithstanding the provisions of subsections (1) through (4) above, any payor who is eligible for the full old age benefit under the United States Old Age, Disability, and Survivor Insurance Act, 42 U.S.C. 416, or who will become eligible for said benefit within 3 years from the date this act takes effect, may file a complaint for modification one year after this act takes effect.

(e) Under no circumstances shall the enactment of this chapter provide a right to seek or receive modification of an existing alimony judgment in which the parties have agreed that their alimony judgment is not modifiable, or in which the parties have expressed their intention that their agreed alimony provisions survive the judgment and therefore are not modifiable.

Continued on next page

(f) In the event of the payor's remarriage, income and assets of the payor's spouse shall not be considered in a redetermination of alimony in a modification action.

(g) Income from a second job or overtime work shall be presumed immaterial to alimony modification if:

(1) A party works more than a single full-time equivalent position; and

(2) The second job or overtime commenced after entry of the initial order.

8. Security
(a) The court may require reasonable security for alimony in the event of the payor's death during the alimony period. Security may include, but is not limited to, maintenance of life insurance.

(b) Orders to maintain life insurance shall be based upon due consideration of the following factors: age and insurability of the payor; cost of insurance; amount of the judgment; policies carried during the marriage; duration of the alimony order; prevailing interest rates at the time of the order; other obligations of the payor.

(c) Orders to maintain security shall be modifiable upon a material change of circumstance.

SECTION 5. Sections 1 through 4, inclusive, shall take effect 90 days from the effective date of this act.

"Common sense is the collection of prejudices acquired by age eighteen."

Albert Einstein

LEGAL LYRICS

By David Aptaker

Editor's Note: *A continuing high point at recent MCLE Family Law Conferences has been David Aptaker's recitation of some leading family law cases in rhyme, to the tune of popular songs. Here's a sampling from this year's conference.*

Katzman v. Healy, 77 Mass. App. Ct. 589 (2010). Post-divorce custodial mom wanted to take the children to live out-of-state with her new husband. Dad objected. **To the tune of *This Land is Your Land*** by Woody Guthrie, popularized by Peter, Paul and Mary.

These kids are your kids, these kids are my kids
From Massachusetts to the New York suburbs
From the Mason AP proach to the Yannas stan—dard
Mom had sole physical custody

As the Judge was tallying each parents' hours
Who cooked kids' breakfast, who made them take showers
When they are at school or merely slee-eping
That's part of parental respons ibility

These kids are your kids, these kids are my kids
From Boston Harbah to near Longgisland
From the Mason AP proach to the Yannas stan—dard
Mom had sole physical custody

Mom's heart was roaming to a New York G-man
Dad worked in Boston, he was not a free man
When the Judge increased the dad's parenting time
The Appeals Court said he did so erroneously
<this land was made for you and me>

These kids are her kids, these kids are his kids
From Red Sox Nation to Derek Jeter's fan base
The transfer of custody absent change of circumstances
Caused the case to be—sent back—on remand

Continued on next page

Altomare v. Altomare, 77 Mass. App. Ct. 601 (2010). Post-divorce custodial mom wanted to take the children to live in another part of Massachusetts. Dad objected. **To the tune of *Scarborough Fair*** by Simon and Garfunkel.

Are you moving to Scituate, MASS
Still in state but more driving time
Even with the use of dad's EZ pass
Such a move may be way out of line

Sole custodian must prove a real advantage
Still in state, but more driving time
If significant disruption of non-custodial parent's, access
By such a move is put on the line

Then the children's best interest must be determined
Still in state, but more driving time
Functional responsibilities of each parent must be considered
This, the Appellate Court did opine

Charara v. Yatim, 78 Mass. App. Ct. 325 (2010). Anticipating their civil divorce in Massachusetts the parents and children went to Lebanon to get a religious divorce where dad got custody. Mom returned and objected. **To the tune of *Yellow Submarine*** by The Beatles.

In the land of Lebanon
Went a Worcester-based family
And the man there tricked his wife
And of their sons got custody

He went to a Jaafarite Court
And got orders, to which mom concurred
She was under some duress
But not completely undeterred

She wouldn't live in Beirut Lebanon, Beirut Lebanon, Beirut Lebanon
She wouldn't stay in Beirut Lebanon, Beirut Lebanon Beirut Lebanon

She returned to Central Mass.
And sought Probate Court interdiciton

And the M- C- C- J A
Allowed for discretionary jurisdiction

And our Judge here chose to explore
With far more factors than before
The children's interests as we say
Now Massachusetts is where they are today

Assalom aleikum to Beirut Lebanon Beirut Lebanon Beirut Lebanon

Smith v. McDonald, 458 Mass. 540 (2010). When dad files to establish paternity and mom moves out of state, the unmarried parents find themselves in the SJC.
To the tune of *Born To Run* by Bruce Springsteen

A man tried to accept responsibility for his non-marital American kid
Mom said she'd put his name on the birth certificate, but that she never did

Dad paid child support out by Highway 9
And visited his child regularly when mom let him have some time

This baby's mom some bags did pack
In a Hatchback, it's a fool daddy rap
She got out while the kid was young
Cause scamps like her, with the baby she had borne did run

Mom had let dad in. Let him be her friend
Had stirred his dreams and visions
For 6 months he obeyed her whims
Been there for the child as per the decision

But mother soon, she sprung her trap
And ran to New York saying "baby we'll never go back"

She lied to dad when he called on the telephone wire
With her baby she was a scarce and distant rider
She had fled on 4 wheels
He found out she fibbed he took steps to make it real
1,2,3,4...

Continued on next page

The Courthouse is jammed with broken people from responsibility trying to hide
Here we had an involved dad who wanted equity applied
Strict statutory construction left him with the sadness
And let him feel the madness of his soul
Someday maybe we'll get to the place
Where the child's interest will be priority number one
But til then, mom is rewarded for taking the baby she had borne to run

David Aptaker previously worked as an attorney for the Massachusetts Department of Social Services, Massachusetts Office for Children and the Department of Mental Health. Since 1991 he has been in private practice. His office is in Stoneham where he currently practices in the areas of mental health law, family law and probate law. David is also an adjunct faculty member at Tufts University. He can be contacted at (781) 438-5222 or at davidaptaker@gmail.com.

"Some cause happiness wherever they go; others, whenever they go."

Oscar Wilde

MASSACHUSETTS FAMILY LAW
A Periodic Review
By Jonathan E. Fields

Pierce Redux While we're all waiting for the Legislature to act on the new alimony bill, it pays to remember that *Pierce* is still good law. The controversial 2009 decision held that a modification or termination of alimony "should not be *solely premised* on a supporting spouse's retirement." A recent appellate decision clarifies *Pierce* further. A sixty-five year old ex-husband filed a complaint to terminate his alimony because he had retired. The Probate judge allowed the ex-husband's complaint and the ex-wife appealed, asserting in her appeal that the judge's order was inconsistent with *Pierce*. The Appeals Court affirmed, noting that the judge properly based her decision on an analysis of the recipient's need and the payor's ability to pay and not *solely* on the fact of the ex-husband's retirement. Importantly, the court also noted that the ex-husband's retirement was in "good faith" and at the "customary retirement age of 65." *Ross v. Ross*, 2011 Mass. Unpub. LEXIS 434 (April 6, 2011)

Agreement to Divide Future Social Security Void Continuing the senior-citizen theme, a recent Colorado decision about social security piqued my interest. A divorce judgment incorporating an agreement of the parties required the husband to pay a portion of his future Social Security benefits to the wife as part of a *property division*. The husband later moved to set aside this provision of the judgment, the motion was denied, and the husband appealed. The appellate court reversed, setting aside the provision and finding that it violated the anti-assignment clause of the Social Security Act. The court also noted that the anti-assignment clause does not prohibit payments for *child support and alimony* – meaning that better research and creative drafting could have prevented the problem. *In re Anderson*, Colo. Ct. App. No. 09CA2592 (December 23, 2010)

Can Bernie Madoff Ruin Your Divorce? Steve Simkin might have thought it shrewd to keep the Madoff investments in his divorce from Laura Blank (after all, where else do you get that kind of interest?) After the Ponzi king confessed his sins, however, and Mr. Simkin discovered his "assets" were worthless, he asked the New York trial court to set aside the property division. The trial court denied Simkin's petition and he appealed. The appellate court

Continued on next page

reversed the denial. At the appellate court, Ms. Blank argued that he could have redeemed what he believed to be his account in excess of its supposed value as of the 2004 valuation date the parties had chosen. The court was unpersuaded – pointing out that Mr. Simkin never had an "account" with Madoff. Indeed, by Madoff's own admission, "there were no accounts within which trades were made on behalf of investors." Poor Simkin. Next time he gets divorced, I bet he bargains to keep the marital home. *Simkin v. Blank*, N.Y. App.Div. No 3016101501/09 (January 4, 2011)

Jonathan E. Fields, Esq. is a partner at Fields and Dennis, LLP in Wellesley. Jon can be contacted at 781-489-6776, or at jfields@fieldsdennis.com

"No man or woman really knows what perfect love is until they have been married a quarter of a century."

Mark Twain

WHAT'S NEWS?
National & International Family News
Chronologically Compiled & Edited by Les Wallerstein

France: Gay Marriage Ban Upheld The constitutional council upheld longstanding legislation on Friday that effectively bans marriage for same-sex couples. The council ruled that civil code references to marriage as a union between a man and woman were not contrary to the Constitution, and said the legislature could change the law if it saw fit. Gay couples in France are allowed civil unions, which advocates say do not afford the same rights as marriage. (Scott Sayare, New York Times, 1/29/2011)

Illinois Legalizes Civil Unions The governor signed a law making civil unions legal for same-sex couples in Illinois. Effective on June 1, it will provide same sex couples many legal protections now given to married couples, such as emergency medical decision-making powers, inheritance rights, pension benefits, adoption and parental rights, and the ability to share a room in a nursing home. Illinois civil unions will be permitted for same sex couples and for opposite sex couples. (Monica Davey, New York Times, 2/1/2011)

A Referee for Family Disputes For years, couples have hired divorce mediators to avoid court battles. Now growing numbers of mediators are specializing in disputes that relate to older adults. Elder mediators help clients resolve conflicts that arise over a variety of issues, from how to share an inherited vacation home to whether Mom should turn over the car keys and who should arrange for transportation. Some families hire mediators on their own initiative, while others are referred—or ordered to attend—by courts. (Anne Tergesen, Wall Street Journal, 2/5/2011)

Hawaiian Lawmakers Approve Civil Unions The Hawaiian Senate has approved legislation allowing civil unions for same-sex couples and the governor has said he will sign it into law. The measure, which grants gay and lesbian couples the same rights and benefits that are provided to married couples, has divided the state for nearly two decades. (The Associated Press, New York Times, 2/17/2011)

China Considers Revising Marriage Laws Sallying forth into the ancient battleground of extramarital affairs, China's top court appears poised to side with wronged wives against philandering husbands and greedy mistresses. Under a draft interpretation of China's marriage law, expected to be issued in coming weeks, mistresses would not be allowed to sue their married lovers for reneging on promises of money, property or goods, said legal experts who have reviewed

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the language. Nor would wayward husbands be allowed to seek the courts' help in retrieving money or goods that they bestowed upon mistresses. But wives could sue to recover money or property that ended up in the hands of a "little third," the colloquial term for a mistress. (Sharon LaFraniere, New York Times, 2/17/2011)

More Couples Are Calling It Quits The American Academy of Matrimonial Lawyers says its members suffered a 37% drop in divorce cases in 2008 and a 57% decline in 2009. But the trend has begun to turn around, with many divorce lawyers saying they've got more business than they can handle—a backlog of pent-up demand. In part, that's because credit has started to loosen up. During the recession, spatting spouses had a tough time arranging the financing to buy out their partner's stake of businesses and homes, as required by property divisions, so they stuck it out. Even couples without Beverly Hills mansions or multimillion dollar companies to divvy up often delay divorce when they're worried about maintaining two households and the possibility of an ex being unable to find a job. (Neema P. Roshania, The Kiplinger Letter, http://www.kiplinger.com, 2/22/2011)

President & Attorney General Declare Key DOMA Provision Unconstitutional President Obama, in a striking legal and political shift, has determined that the Defense of Marriage Act - the 1996 law that bars federal recognition of same-sex marriages - is unconstitutional, and has directed the Justice Department to stop defending the law in court. Attorney General Eric H. Holder Jr. announced the decision in a letter to members of Congress. "The president and I have concluded that classifications based on sexual orientation" should be subjected to a strict legal test intended to block unfair discrimination, Mr. Holder wrote. As a result, he said, a crucial provision of the Defense of Marriage Act "is unconstitutional." Conservatives denounced the shift, gay rights advocates hailed it as a watershed, and legal scholars said it could have far-reaching implications beyond the marriage law. (Charlie Savage And Sheryl Gay Stolberg, New York Times, 2/24/2011)

Financial Infidelity According a December online poll commissioned by ForbesWoman and the National Endowment for Financial Education, 31 percent of Americans who have combined their finances said they lied to their spouses about money. According to a different survey from the nonprofit CESI Debt Solutions, 80 percent of spouses spend money that their partner doesn't know about. The secret spending occurs in categories such as clothing and accessories, food and dining, beauty and personal care items, gifts, and alcohol, among other

areas, the CESI Debt Solutions survey found. (Jennifer Saranow Schultz, New York Times, 2/26/2011)

Sexual Activity Declines For American Youth Fewer teenagers and young adults are having sex, according to a study by the Centers for Disease Control and Prevention. Based on interviews with about 5,300 young people, ages 15 to 24 from 2006 through 2008, it showed that 27 percent of young men and 29 percent of young women reported no sexual contact. The study also reported that the proportion in that age group who said they had never had oral, vaginal or anal sex rose in the past decade to about 28 percent, from 22 percent. The survey is considered the largest and most reliable on sexuality. (Associated Press, New York Times, 3/3/2011)

U.S. Army Divorce Rates Soar Between 2001 and 2004, divorces among active-duty Army officers and enlisted personnel nearly doubled, from 5,658 to 10,477, even though total troop strength remained stable. In 2002, the divorce rate among married officers was 1.9 percent — 1,060 divorces out of 54,542 marriages; by 2004, the rate had tripled to 6 percent, with 3,325 divorces out of 55,550 marriages. (David Crary, Associated Press, U.S. News on NBC.com, 3/8/2011)

Divorce Rate Rises in Rural America For the first time, American adults in rural areas are just as likely to be divorced as those living in cities, according to an analysis of census data by The New York Times. Nationally, there were about 121 million married adults and 26 million divorced people in 2009, compared with about 100 million married and 11 million divorced people in 1980. (By Sabrina Tavernise and Robert Gebeloff, New York Times, March 24, 2011)

Numbers of Children of Whites Falling Fast America's population of white children, a majority now, will be in the minority during this decade, sooner than previously expected, according to a new report by the senior demographer at the Brookings Institution. The population of white children fell by 4.3 million, or about 10 percent, in the last decade, while the population of Hispanic and Asian children grew by 5.5 million, or about 38 percent, according to the report, which was based on 2010 Census numbers. The number of African-American children also fell, down by 2 percent. Over all, minorities now make up 46.5 percent of the under-18 population. (By Sabrina Tavernise, New York Times, April 6, 2011)

France: Surrogacy Ban Affirmed In a ruling that affirmed France's ban on surrogacy, the country's top court refused on Wednesday to allow French citizenship for 10-year-old twin girls born to a surrogate mother in the United States who carried the babies

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for a French couple. The Court of Cassation said that a California county went too far by ruling that a French couple are legally the twins' parents. The ruling exposes the legal limbo that many would-be parents find themselves in because of inconsistencies on surrogacy between countries like the United States, which legally recognizes it, and those that ban it. While the court ruled that the girls could not be listed in France's civil registry, it also said that nothing prevented them from living with the couple in France. The couple's lawyer said they planned to appeal to the European Court of Human Rights. (New York Times, Associated Press, 4/8/2011)

Les Wallerstein is a family mediator and collaborative lawyer in Lexington. He can be contacted at (781) 862-1099, or at wallerstein@socialaw.com

"The divorce rate would be lower if instead of marrying for better or worse people would marry for good"

Ruby Dee

MCFM NEWS

MCFM ANNUAL MEETING & ELECTION

May 4, 2011
Weston Public Library, 87 School Street

2:00-2:30 PM: ELECTION
And right after the election...

MCFM invites MCLC to join us For a presentation by Joe Shay: COUPLES GONE WILD: THE TOP TEN COMPLICATIONS IN COUPLES THERAPY

Joe uses video clips from popular TV shows (Edie Falco and James Gandolfini with therapist Lorraine Braco in an episode of "The Sopranos") and movies (Jennifer Aniston and Vince Vaughn in "The Breakup") to illustrate his 10 top challenges in couples therapy.

PRESENTATION: 2:45-4:45 PM
BY PRE-REGISTRATION ONLY!

Preregistration Note: Joe Shay's workshop is a shared venture between our Massachusetts Council on Family Mediation and the Massachusetts Collaborative Law Council. We are expecting a full house, and we have space for no more than 80 participants. **MCFM members will have until Thursday, March 31 to reserve and be guaranteed a seat.** After that date, this notice will be forwarded to all MCLC members for their participation. **Reservations after March 31 will be accepted on a first-come, first-served basis.**

RSVP REQUIRED FOR THIS PRESENTATION! Our space is limited to 80 participants. Seats will be reserved on a first-come, first-served basis. Please reply to this e-mail to reserve your place. If space permits, prospective members will be welcome!

Continued on next page

MEDIATION PEER GROUP MEETINGS

North Suburban Mediators Group: MCFM is happy to announce the formation of a new mediator peer support group (practice group)! The new group, North Suburban Mediators Group, will meet at the offices of Susan DeMatteo and Lynda Robbins at 34 Salem Street, Suite 202, Reading, MA. **The initial organizational meeting will be held on Tuesday, May 3 at 8:30 AM. Please R.S.V.P. to Lynda at lynda@familydisputesolutions.com or call 781-944-0156.** This follows over a decade of peer support group work in the Merrimack Valley and extends the notion that we improve our skills when we network and share. All are invited.

Pioneer-Valley Mediators Group: This Western Mass group is newly organized and will be meeting monthly in December on the first Wednesday of every month at the end of the day, from 4 to 6 pm or 6 to 8 pm (depending on the interest) in Northampton at a location to be announced. Please email Kathy Townsend for further information at <Kathleen@divmedgroup.com>

Mediators in Search of a Group? As mediators we almost always work alone with our clients. Peer supervision offers mediators an opportunity to share their experiences of that process, and to learn from each other in a relaxed, safe setting. Most MCFM directors are members of peer supervision groups. All it takes to start a new group is the interest of a few, like-minded mediators and a willingness to get together on a semi-regular, informal basis. In the hope of promoting peer supervision groups a board member will volunteer to help facilitate your initial meetings. Please contact Kathy Townsend <Kathleen@divmedgroup.com> who will coordinate this outreach, and put mediators in touch with like-minded mediators.

OFFER MCFM BROCHURES IN YOUR WAITING ROOM

Copies of MCFM's brochure are available for members. Brochure costs are as follows: Two for $1; 25 for $10; 60 for 20; 100 for $30; and 150 for $40. **A blank area on the back is provided for members to personalize their brochures, or to address for mailing.**

TO OBTAIN COPIES MEMBERS MAY
call Ramona Goutiere: 781-449-4430
or email: masscouncil@mcfm.org

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HELP BUILD AN ARCHIVE!

In the spring of 2006, MCFM entered into an agreement with the Department of Dispute Resolution at the University of Massachusetts to create an archive of Massachusetts family-related mediation materials. The two key goals are to preserve our history and make it available for research purposes.

We're looking for anything and everything related to family mediation in Massachusetts — both originals and copies — including: meeting agendas and minutes, budgets, treasurer's reports, committee reports, correspondence, publications, fliers, posters, photographs, advertisements and announcements.

We need your help to maximize this opportunity to preserve the history of mediation in Massachusetts. **Please rummage through your office files, attics, basements and garages.** ***If you discover materials that you are willing to donate please contact Les Wallerstein at wallerstein@socialaw.com.***

ANNOUNCEMENTS

* *

All mediators and friends of mediation are invited to submit announcements of interest to the mediation community to wallerstein@socialaw.com, for free publication.

* *

MARITAL MEDIATION TRAINING

How to Use Mediation to Help Couples Stay Married

Presenter: Laurie Israel
Cost: $300

Marital mediation is a way to use mediation to help couples that are experiencing marital problems, but wish to stay married. Come learn how to work in this exciting new field. The workshop will address communication issues, financial problems, acknowledgment issues, and others. There will be role-plays, Power Point presentations, and a segment on formulating and drafting postnuptial agreements.

Saturday, April 30, 2011
Laurie will present this program for the
Montana Mediation Association in Helena, Montana

Saturday, May 14, 2011
Laurie will present this program
in New York City

For Family Mediators & Collaborative Professionals

Email For Details
lisrael@socialaw.com

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Building Bridges • People to People • Face to Face

ELDER DECISIONS / AGREEMENT RESOURCES, LLC

A Three Day Advanced Mediation Training in
Elder (Adult Family) Mediation

$100 DISCOUNT FOR MCFM MEMBERS
April 26-28, 2011
Tuesday, Wednesday, Thursday
9:00 AM - 5:00 PM on days 1 & 2
9:00 AM - 4:00 PM on day 3

Elder mediation helps seniors and their adult children resolve conflicts around issues such as living arrangements, care giving, financial planning, inheritance/estate disputes, medical decisions, family communication, driving, and guardianship. This three-day course will cover:

Mental & Physical Effects of Aging: Normal Aging, Physical Changes, Cognitive Changes, Alzheimer's Disease and Other Forms of Dementia, Depression in the Elderly, Families and Caregiving- Intergenerational Relationships, Long Term Care and In-Home Services, Costs of Care, Who pays for Services and Maintaining Independence.

Legal Planning: Planning for Financial Management, Medicaid Eligibility, Medical Decision Making, Asset Protection and Guardianship.

Advanced Multi-Party Mediation Skills & Challenges Of Elder Mediation: Neutrality vs. Mediator Advocacy, Common Hurdles, New Strategies for Intake, Exploring the Hybrid Model of Elder Mediation, Working with Large, Dispersed Family Groups, Ethical Concerns, Age Bias, Considering and Maximizing Capacity, Complex Multi-Party Role Plays and more!

Seminar on Marketing Your Mediation Practice: Interactive exercises and specific tools for elder mediators.

Elder Decisions' Training Team: Arline Kardasis, Rikk Larsen, Crystal Thorpe and Blair Trippe. Partners and Senior Trainers at Elder Decisions

Along With Expert Guest Presenters: Jeffrey Bloom, Esq., Emily Saltz, MSW, LICSW & Jennifer Decker, Mediation Marketing Specialist.

Continued on next page

Cost $875 / $775 for MCFM Members
Includes breakfast pastries, coffee, lunch on site, snacks and course materials.

Social Work CEUs offered

To be held at The Walker Center
A Charming B&B and Conference Center in Newton
Just off Rte 95 and the Mass Pike (Rte 90)
Close to Riverside MBTA Station

This training will be offered again July 19-21, 2011 and October 25-27, 2011
See www.ElderDecisions.com for details

DIVORCE IN MASSACHUSETTS: WITH OR WITHOUT A LAWYER

Jerome Weinstein
& Les Wallerstein

When the issue of divorce is raised, most people don't know where to turn. How do I get information? Do I need an attorney? Should I pay a retainer? What will happen to my children and my home? This course will give you information about what you can and cannot do and what kinds of risks are involved. It will also address when you need an attorney (with the attendant costs) or when you can use a mediator or do it yourself. You will also receive resources and a bibliography.

The Cambridge Center For Adult Education
SATURDAY, MAY 7, 2011
9:30 AM - 12:30 PM
42 Brattle Street

Online Registration: http://www.ccae.org
Phone Registration: 617-547-6789
Cost: $61.00, Limited to 20

JOHN A. FISKE & DIANE NEUMANN
Present at ACR's Family Section Conference this Summer

The Association for Conflict Resolution: Family Section Conference
A Family Odyssey will be held in Minneapolis July 27-30, 2011.

We are on the Conference Committee and will be presenting, along with many other experienced divorce mediators. **"Keys to Unlocking Financial Issues in Divorce"** will be one of our programs.

Gary Friedman, author of "A Guide to Divorce Mediation" will be the keynote speaker on Thursday morning, July 28, and should not be missed by anyone interested in the future of mediation.

Any mediator wishing to attend may not be too late to submit a proposal for a workshop if (s)he acts quickly. A workshop related to divorce mediation consistent with the theme of an odyssey, which could include many different approaches to mediation procedurally or substantively, would be welcome. If you are interested in presenting, send an email as soon as possible to Marya Kolman at marya_kolman@fccourts.org.

Presenter or not, we think you will enjoy your colleagues, learn a lot and contribute to the richness of the conference.

We hope to see you there!

John & Diane

NEW BEGINNINGS

An interfaith support group for separated, divorced, widowed and single adults in the Greater Boston Area. **Meets year-round, every Thursday, from 7:00 to 9:00 PM, at** Wellesley Hills Congregational Church, 207 Washington Street. For more information call 781-235-8612. **Annual Dues $50.**

For program details & schedule visit
www.newbeginnings.org

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PART-TIME MEDIATOR POSITION AVAILABLE

Diane Neumann & Associates: Divorce Mediation Services, Watertown, MA, has an opening for a part time North Shore divorce mediator. The hours include two evenings per week. The mediator provides joint mediation sessions to clients, followed by substantial document drafting. These documents typically require complex financial and tax calculations. Preference will be given to attorneys who have mediation training, experience, and practice family law. **This individual would not be able to maintain a separate mediation practice.**

Requirements:

Licensed Massachusetts attorney, Divorce mediation experience
Divorce mediation training, Knowledge of divorce law
Excellent writing skills, Financial expertise
Tax knowledge of divorce related issues a plus
Understanding of interpersonal couple and family dynamics
Child development

Please e-mail detailed cover letter and resume to:
dnapplicants@aol.com
No phone calls, please.

THE FMQ WANTS YOU!

The Family Mediation Quarterly is always open to submissions, especially from new authors. **Every mediator has stories to tell and skills to share.**

To submit articles or discuss proposed articles
call Les Wallerstein (781) 862-1099
or email wallerstein@socialaw.com

NOW'S THE TIME TO SHARE YOUR STORY!

JOIN US

MEMBERSHIP

MCFM membership is open to all practitioners and friends of family mediation. MCFM invites guest speakers to present topics of interest at four, free, professional development meetings annually. These educational meetings often satisfy certification requirements. Members are encouraged to bring guests. MCFM members also receive the Family Mediation Quarterly and are welcome to serve on any MCFM Committee. Annual membership dues are $90, or $50 for fulltime students. Please direct all membership inquiries to **Ramona Goutiere at masscouncil@mcfm.org**.

REFERRAL DIRECTORY

Every MCFM member with an active mediation practice who adheres to the Practice Standards for mediators in Massachusetts is eligible to be listed in MCFM's Referral Directory. Each listing in the Referral Directory allows a member to share detailed information explaining her/his mediation practice and philosophy with prospective clients. The most current directory is always available online at www.mcfm.org. The annual Referral Directory fee is $60. Please direct all referral directory inquiries to **Rebecca J. Gagné at rebecca@gagneatlaw.com**.

PRACTICE STANDARDS

MCFM was the first organization to issue Practice Standards for mediators in Massachusetts. To be listed in the MCFM Referral Directory each member must agree to uphold the MCFM Standards of Practice. **MCFM's Practice Standards are available online at www.mcfm.org**.

CERTIFICATION & RECERTIFICATION

MCFM was the first organization to certify family mediators in Massachusetts. Certification is reserved for mediators with significant mediation experience, advanced training and education. Extensive mediation experience may be substituted for an advanced academic degree.

MCFM's certification & recertification requirements are available online at www.mcfm.org. **Every MCFM certified mediator is designated as such in the online Referral Directory.** Certified mediators must have malpractice insurance, and certification must be renewed every two years. Only certified mediators are eligible to receive referrals from the Massachusetts Probate & Family Court through MCFM.

Certification applications cost $150 and re-certification applications cost $50. For more information contact **S. Tracy Fischer at tracy@tracyfischermediation.com**. For certification or re-certification applications contact **Ramona Goutiere at masscouncil@mcfm.org**.

DIRECTORATE

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EDITOR'S NOTICE

MCFM
Family Mediation Quarterly

Les Wallerstein, Editor
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The FMQ is dedicated to family mediators working with traditional and non-traditional families. All family mediators share common interests and concerns. The FMQ will provide a forum to explore that common ground.

The FMQ intends to be a journal of practical use to family mediators. As mediation is designed to resolve conflicts, the FMQ will not shy away from controversy. The FMQ welcomes the broadest spectrum of diverse opinions that affect the practice of family mediation.

The contents of the FMQ are published at the discretion of the editor, in consultation with the MCFM Board of Directors. The FMQ does not necessarily express the views of the MCFM unless specifically stated.

The FMQ is mailed and emailed to all MCFM members. The FMQ is mailed to all Probate & Family Court Judges, all local Dispute Resolution Coordinators, all Family Service Officers and all law school libraries in Massachusetts. An archive of all previous editions of the FMQ are available online in PDF at <www.mcfm.org>, accompanied by a cumulative index of articles to facilitate data retrieval.

MCFM members may submit notices of mediation-related events for free publication. Complimentary publication of notices from mediation-related organizations is available on a reciprocal basis. Commercial advertising is also available.

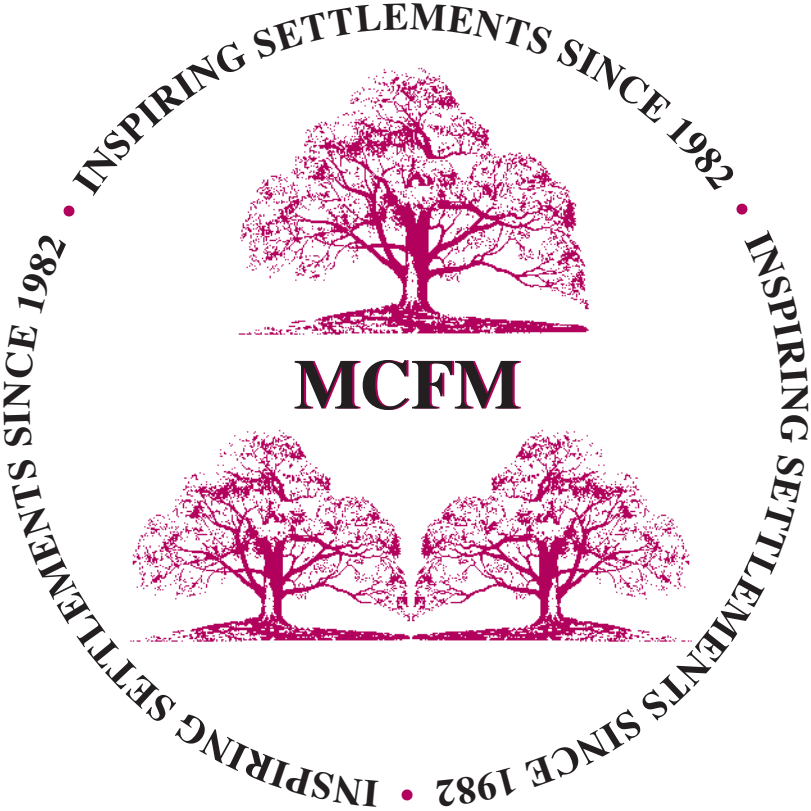
Please submit all contributions for the FMQ to the editor, either by email or computer disk. Submissions may be edited for clarity and length, and must scrupulously safeguard client confidentiality. The following deadlines for all submissions will be observed:

Summer: July 15th Fall: October 15th
Winter: January 15th Spring: April 15th

All MCFM members and friends of family mediation are encouraged to contribute to the FMQ. Every mediator has stories to tell and skills to teach. Please share yours.

MASSACHUSETTS COUNCIL ON FAMILY MEDIATION

www.mcfm.org



The Family Mediation Quarterly is printed on paper stock that is manufactured with non-polluting wind-generated energy, and 100% recycled (with 100% post consumer recycled fiber), processed chlorine free and FSC (Forest Stewardship Council) certified.